Political Science
Legal Studies 217

Reading and Analyzing Cases

How Does Law Influence Judicial Review?

- Lower courts
  - Analogic reasoning
  - Find cases that are close and draw parallels
- Supreme Court
  - Decision structures
  - "Fundamental freedoms"
  - Protection of minorities from excesses of majority
    - Footnote 4 (Carolene Products, 1938)
  - Strict vs. rational basis scrutiny
  - Tests: The Lemon Test

Legal Reasoning: An Art Not a Science

- Legal reasoning is the way a legal actor combines five elements to produce an explanation of a decision or an argument in support of a desired decision
  - Case facts
  - The relevant rules in legal text(s)
  - Precedential cases
  - Social background facts
  - Shared values
- Ascertaining the relevant rule involves
  - The "plain meaning" of the legal text
  - The intent of the authors of the legal text
  - The purpose of rule
  - Analytic frameworks and categories
  - Canons of statutory construction
  - The "golden rule"
Legal Reasoning in Practice

- Weighing and balancing all of the elements enumerated
- Bringing one's best judgment to bear in order to reach a decision
  - In many situations, the answer may be clear-cut
- When it is not, the decision maker's own preferences and attitudes will influence his or her decision

Reading Cases

1. What are the facts in the case?
2. What, if any, significant social background facts does the Court explicitly consider?
3. What is the general question the Court is deciding?
4. What is the specific legal question the Court is deciding?
5. What is the legal rule the Court enunciates?
6. What is the Court's explanation of why that is the correct legal rule?

"Briefing" Cases

- Elements
  - Cite
  - Facts of the case
  - Legal issue(s)
  - Decision (or holding)
  - Reason (or rationale of the court)
- Legal vs. Political Analysis
  - General issue(s)
  - Social background facts
Roe v. Wade

- What are the facts of Jane Roe’s case as represented in the decision?
  - What facts are missing?
- What are the broader social background facts raised in the decision?
- What is the political/policy issue to be decided in the case?

Roe v. Wade continued

- What is the question of law to be resolved?
- What is the central legal issue?
- What is the holding?
  - Is the right absolute?
  - What rules are established?

Rationale

- Need to look at the relevant parts of the constitution
- Need to consider analogous cases
- Need to consider standards for decision
Privacy
- Where does the right of privacy come from?
- Is it mentioned in the Constitution
- What is a “penumbra“?

First Amendment
- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”
- What might this have to do with abortion?

Fourth Amendment
- “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
Fifth Amendment

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Ninth Amendment

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Fourteenth Amendment

Section 1

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Incorporation
History of Law Concerning Abortion

- Why is this relevant?

Privacy in the Supreme Court

- Stanley v. Georgia (1969)
  - Possession of pornographic materials in privacy of one’s own home
- Griswold v. Connecticut (1965)
  - Use of contraceptives by married couple
- Loving v. Virginia (1967)
  - Right to marry without regard to race
- Skinner v. Oklahoma (1942)
  - Right to procreate
- Pierce v. Society of Sisters (1925)
  - Right to educate children in private (religious) school

“Fundamental” rights

- Why is the question of whether, and when, abortion is a “fundamental” privacy right important?
- What compelling state interests does Blackmun identify?
- When do these become compelling?
  - Why these times?
Dissent

- What are Justice Rehnquist’s points of disagreement?
- Does Rehnquist agree that privacy is a “fundamental” right under the Constitution?
  - Is abortion a “fundamental” right?
  - Why is this important?

Is abortion a “fundamental” right? Why is this important?